



Civil Resolution Tribunal

Date Issued: February 28, 2019

Files: ST-2017-004679,
ST-2017-004681,
ST-2017-005983,
and ST-2017-006059

Type: Strata

Civil Resolution Tribunal

Indexed as: *Campbell v. The Owners, Strata Plan NW 1018*, 2019 BCCRT 240

B E T W E E N :

Wayne J. M. Campbell

APPLICANT

A N D :

The Owners, Strata Plan NW 1018

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

J. Garth Cambrey, Vice Chair

INTRODUCTION

1. This decision involves 4 separate disputes with the same parties.
2. The applicant in all 4 disputes, Wayne J. M. Campbell, was the owner of strata lots 76 (SL76), 120 (SL120) and 171 (SL171) in the respondent strata corporation. He sold SL76 on October 30, 2017, SL171 on June 18, 2018, and SL120 on January 30, 2019.
3. The respondent in all 4 disputes, The Owners, Strata NW 1018 (strata), is a strata corporation existing under the *Strata Property Act* (SPA).
4. The disputes are about voting issues, repair and maintenance of a water shut-off valve, governance issues, and bylaw fines relating to a Form K – Notice of Tenant’s Responsibilities (Form K), under the SPA.
5. The applicant seeks various orders as described below.
6. For the reasons that follow, I dismiss all the applicant’s claims.

JURISDICTION AND PROCEDURE

7. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 121 of the *Civil Resolution Tribunal Act* (Act). The tribunal’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
8. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.

9. The tribunal may accept as evidence information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
10. Under section 123 of the Act and the tribunal rules, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

11. The issues before me are:
 - a. Should I hear these disputes, or some of them, given the applicant is no longer an owner in the strata?
 - b. If I decide to hear the applicant's disputes:
 - i. Can a limit be placed on the number of proxies a strata council member can hold? If so, is 5 an appropriate number?
 - ii. Is the strata responsible to repair a water shut-off valve located in the applicant's SL76? If yes, should I order the strata to reimburse the applicant \$157.50 for the cost of the plumber's attendance at SL76, and other claimed expenses relating to the applicant's involvement in monitoring the leaking shut off valve?
 - iii. Should I strike down a resolution that the applicant alleges gives the strata council president control of the strata corporation, or in the alternative, should I order the strata to conduct a general meeting to elect interested council members?
 - iv. Is the strata entitled to collect \$800 in bylaw fines from the applicant for not filing Form Ks relating to the rental of the applicant's strata lots?

- v. Should I order the strata to reimburse the applicant an alleged overcharge of \$14.50, \$500 for interest, and \$1,500 for damages?

Should I continue to hear these disputes, given the applicant is no longer an owner in the strata?

- 12. At my request, the parties made submissions on whether the tribunal should continue to hear these disputes.
- 13. The strata says the tribunal should not continue to hear the disputes because Mr. Campbell is no longer an owner in the strata and that the applicant should not be able to affect how the strata operates in the future, particularly with respect to conducting meetings. The strata says the factors identified in *Kervin v. The Owners, Strata Plan LMS 3011*, 2017 BCCRT 146 apply to these disputes and expresses particular concern about the following:
 - a. In Dispute ST-2017-004679, the applicant is seeking an order to restrict the number of proxies a council member can hold, how general meetings should be run, including a bylaw change, even though he would not be entitled to attend or vote at future general meetings;
 - b. In Dispute ST-2017-004681, the applicant is seeking an order that the strata replace or repair a leaking water shutoff for a strata lot in which the applicant no longer owns;
 - c. In Dispute ST-2017-005983, the applicant wants to be able to attend council meetings even though he is not an owner. Also, the applicant is requesting financial records outside the period of his ownership that he his not entitled to obtain;
 - d. In Dispute ST-2017-006059, the applicant seeks an order that bylaw fines relating to a Form K should be reversed, which the strata had already done;
 - e. The applicant stated that wanting payment for his debt claims as the reason he was not willing to withdraw his claims and what is sought now by the applicant is only of importance to the applicant;

- f. Prejudice will result to the strata's ownership if the applicant's requested orders are granted as some of the governance issues in dispute will have a lasting impact on the strata's ownership but little to no effect on the applicant; and
 - g. Continuing to hear the disputes would require a considerable amount of time and tribunal resources.
14. The applicant makes a number of arguments to support his view that the tribunal should continue to hear his disputes. I summarize them as follows:
- a. Even though he is no longer an owner, he still has ties to the strata as his brother is an owner and the applicant holds an going proxy for another owner, so the applicant intends on attending general meetings and council meetings when permitted,
 - b. As a representative of an owner and as a former owner the applicant may access and obtain copies of certain records under section 35 of the SPA,
 - c. The strata continues to be oppressive towards the applicant and other owners who have not given their proxy to the council president,
 - d. The applicant paid his tribunal fees and any abandonment of his claims would cause him financial hardship as well as leave his concerns unanswered. Particularly his request for reimbursement of monies paid to obtain a Form F – Certificate of Payment for his sale of SL76,
 - e. The factors identified in *Kervin* and other tribunal decisions involving prior owners that address the importance of issues and the stage in the tribunal proceeding at which the applicant ceases to become an owner favour the disputes being heard, and
 - f. The applicant withheld selling SL120 based on advice from the tribunal that his disputes would be heard by November 2018, which was then delayed until January 2018, and he left SL120 empty for 11 months so as not to allow the strata to continue fining him.

15. I agree with the parties that the factors I identified in *Kervin* are relevant here. Those factors are:
- a. Whether all of the parties to the claim or dispute agree that the claim or dispute should be resolved by the tribunal;
 - b. Whether an issue raised by the claim or dispute is of importance to persons other than the parties to the dispute;
 - c. The stage in the tribunal proceeding at which the applicant ceases to be an owner;
 - d. The relative prejudice to the parties of the tribunal's potential order; and
 - e. The effect of continuing the proceeding on the tribunal's resources and mandate.
16. In assessing the listed factors, I find that I should continue to hear the disputes. My reasons follow.
17. It is obvious the parties do not agree whether the disputes should be heard. I also find the disputes are important only to the parties.
18. The stage at which the applicant ceased to be an owner was at the conclusion of the tribunal's facilitation phase, after all submissions and evidence were provided, and while I was deciding the disputes. I find the remaining involvement of the tribunal is not overly taxing on the tribunal's resources.
19. I recognize that the parties' relationship is unlikely to continue in the same capacity as it did now that the applicant is no longer an owner. I am also not persuaded the applicant's continuing ties to the strata are significant. That the applicant has a close family relative that remains an owner and that he has a continuing proxy for another owner is not sufficient reason on its own to continue to hear the disputes.

20. However, for reasons that are not clear, I find the tribunal has not adjudicated the disputes as swiftly as it perhaps could have, which as I have mentioned, is at the very end of tribunal's process.
21. Most importantly, I find the relative prejudice to the applicant outweighs the relative prejudice to the strata, if I do not continue to hear the disputes.
22. For these reasons, I have exercised my discretion to decide the disputes on their merit.

BACKGROUND, EVIDENCE AND ANALYSIS

23. I have read all the submissions and evidence provided but refer only to information I find relevant to provide context for my decision.
24. In a civil proceeding such as this, the applicant must prove his claims on a balance of probabilities.
25. The strata consists of 186 strata lots in 11 buildings in Surrey, B.C.
26. The strata filed a complete new set of bylaws with the Land Title Office on January 31, 2014. It is these bylaws that are relevant to in this decision. There are other bylaw amendments filed after January 2014, but I find they are not relevant to this decision.
27. The applicant is a past strata council member although it is unclear exactly when he served on the council. The relationship between the owner and the strata council has been, and continues to be, difficult as evidenced by the applicant's 2 prior tribunal applications decided by the tribunal on February 9, 2018. That decision is indexed as *Campbell v. The Owners, Strata Plan NW 1018*, 2018 BCCRT 36.
28. The tribunal's earlier decision is in addition to a petition brought by the applicant before the BC Supreme Court in 2014, indexed as *Campbell v. The Owners, Strata Plan NW1018*, 2014, BCSC 2058, that resulted in a lawyer overseeing the strata's subsequent annual general meeting.

29. I note at the outset that the applicant requests several remedies that I find are disconnected, and do not flow, from the applicant's claims. For example, the applicant states that several document requests went unanswered but has not included a claim for documents. The applicant has also attempted to add claims during submissions, which occurs after the Tribunal Decision Plan (TDP) is given to the parties. For example, the applicant says he wants safe access to documents requested under section 35 of the SPA but does not make a corresponding claim. Tribunal rule 107 states that no claims may be added after the TDP is given to the parties. As a result, I have not addressed remedies that do not directly tie to the claims made nor have I addressed claims that have been added during submissions.

Dispute ST-2017-004679

Can a limit be placed on the number of proxies a strata council member can hold? If so, is 5 an appropriate number?

30. The applicant says there is no democracy in the strata and that certain strata council members control the strata. He says that there should be a limit on the number of proxies a strata council member can hold for any given general meeting suggesting that 5 is an appropriate limit. He seeks orders involving the general meeting vote registration process to permit an owner or group of owners to observe the and verify the process and number of registered votes, as well as a modification of the strata's bylaw that permits only the general meeting chair to determine how voting is to be conducted.

31. The strata says the SPA entitles owners to appoint a proxy for attending general meetings and that there is no restriction on the number of proxies a person can hold. It also says the there is no bylaw that limits the number of proxies a person can hold. The strata disagrees with the applicant's requested remedies in essence because the SPA or bylaws do not require the applicant's requested process and the tribunal does not have authority to order the strata's bylaws amended or struck down.

32. I agree with the strata that the SPA and strata bylaws do not restrict the number of proxies one person can hold. While section 56 of the SPA sets out certain requirements of a proxy form, and restrictions on who may hold a proxy, it does not limit the number of proxies any individual can hold. The Supreme Court has found that section 56 of the SPA provides for unlimited proxies to allow absentee owners to vote: *Clarke v. The Owners, Strata Plan VIS770*, 2008 BCSC 347. (My emphasis.)
33. I find that each individual owner has a democratic right to vote and in doing so, may select a proxy of their choosing to exercise their vote as set out in section 56. I find to restrict an owner from choosing their proxy by limiting the number of proxies an individual can hold would go against the democratic rights of the voting owner.
34. Further, as noted by the strata, the strata has not adopted any bylaw purporting to restrict proxies in any fashion, which supports a conclusion that the strata's ownership does not wish to restrict proxies in the manner suggested by the applicant.
35. Therefore, I decline to order that a limit be placed on the number of proxies a strata council member can hold.
36. As for the applicant's requested orders, I find the voting process is set out in the strata's bylaws. It also appears that the BC Supreme Court addressed some of the owner's requested orders in *Campbell v. The Owners, Strata Plan NW1018*, 2014, BCSC 2058. Even so, the applicant does not claim he has been treated significantly unfairly by the strata's process nor does the evidence show that he made any attempt to petition the strata to amend its bylaws concerning voting procedures. For these reasons, I decline to interfere with the strata's democratic process respecting voting procedures by invoking or amending its bylaws.
37. Therefore, I decline to order the applicant's remaining requests under this dispute.

Dispute ST-2017-004681 and Part of Dispute ST-2017-006059

Is the strata responsible to repair a water shut-off valve located in the applicant's SL76?

38. The applicant says the strata is responsible to repair what he says is a main water shutoff value in SL76 that was leaking at the time he commenced dispute ST-2017-004681. He says a 1995 arbitration involving the strata confirms the strata's responsibility to pay. In dispute ST-2017-004681, the applicant sought orders that the strata repair the leaking value and reimburse him, \$125 per hour for his time, and \$5.00 per kilometre for travel, to monitor the leaking valve and empty the pail collecting the water. He then sold SL76 on October 30, 2017.
39. In dispute ST-2017-006059, commenced October 24, 2017, the applicant seeks an order that the strata reimburse him the \$157.50 cost of the plumber's attendance at SL76 on August 25, 2017 to investigate the shut off valve leak.
40. The strata says the applicant is responsible for the repair as it did not involve common property. It disagrees the arbitration requires the strata to be responsible for the shutoff valve inside SL76.
41. I have reviewed the 1995 Arbitration Award relied upon by the applicant. Briefly, the arbitrator found a hot water pipe located in the ceiling space above the kitchen of an upper level strata lot was the responsibility of the strata lot owner and not the strata. I find this to be contrary to the applicant's allegation that the award supports a finding that the strata is responsible for shut off valves of individual strata lots that are located within the strata lot. I also find the arbitration award was based on different circumstances, different legislation (the *Condominium Act*), and different strata bylaws than the current bylaws before me in this dispute. I place no weight on content of the arbitration award.
42. Here the applicant claims the strata charged back a plumbing invoice to his SL76 account. He says he was forced to pay the amount through his notary to obtain a

Form F - Certificate of Payment (Form F) under the SPA to permit the sale of SL76 in October 2017.

43. Although the applicant was an owner at the time the Dispute Notices were issued for ST-2017-004069 (October 3, 2017) and ST-207-006059 (October 24, 2017), he was not forced to pay the plumbing expense. He could have paid it to the strata to hold in trust under section 114 of the SPA until the matter was resolved. The applicant decided not to choose that option available to him at the time.
44. As earlier noted, the applicant must prove his claim on the balance of probabilities. He argues the shutoff valve is common property and therefore the strata is responsible to repair and maintain the valve. This is consistent with section 72 of the SPA and the strata's bylaw 7. However, the strata argues the shut off valve is not common property.
45. Based on the evidence before me, I find I am unable to determine if the shut off valve in question is common property. The applicant has not provided any evidence as to the valve's location to persuade me that the shut off valve in question meets the definition of common property set out in section 1 of the SPA. The only evidence I have that describes the location of the valve is an August 11, 2018 letter from the plumbing contractor who attended SL76 a year earlier that states the leaking "ball valve was inside the mechanical area above the hot water tank outside of any wall."
46. As a result, I decline to order the strata reimburse the applicant \$157.50 for the plumbing charge. For the same reason, I also decline to order the strata reimburse the owner for time and travel costs associated with monitoring the leaking shutoff valve.

Dispute ST-2017-005983

Should I strike down a resolution that the applicant alleges gives the strata council president control of the strata corporation, or in the alternative, should I order the strata to conduct a general meeting to elect interested council members?

47. Although a copy of the meeting minutes was not provided in evidence, the parties agree that on March 6, 2016 the strata council passed the following resolution:

Be it resolved that any direction coming from the Council President, [name], is deemed to be the legal direction of the entire Council and should be followed by the Strata Manager. This applies to periods of time between regular Council meetings when other council members might not be usually available.

48. The applicant says the March 6, 2016 resolution gives the council president control of the strata and asks the tribunal to “strike down” the resolution. Alternatively, the applicant asks the tribunal to order the strata to call a general meeting “to elect interested council members”.

49. The applicant seeks orders for the following:

- a. A means to communicate with all strata council members,
- b. A proper financial report that includes disclosure of funds paid to strata council members,
- c. A financial report that discloses income other than strata fees,
- d. The ability to attend strata council meetings, and
- e. Safe access to all section 35 documents and the ability to take copies of requested documents.

50. The strata denies the council president makes decisions without informing the other members of the strata council or in any way is the sole person to run the strata

corporation. It says the applicant misunderstood the intent of the council resolution. The strata says the resolution was passed to confirm the property manager could accept instructions from the council president on behalf of the strata council between council meetings and following electronic meetings that the property manager does not usually attend.

51. The strata asks the tribunal to dismiss the applicant's claim.
52. I accept the position of the strata as it is supported by statements contained in council meeting minutes dated September 22 and October 27, 2015 that address communication with between the strata council and property manager. Accordingly, I decline to "strike down" the March 6, 2016 strata council resolution noted above.
53. I also decline to order the applicant's alternate request that the strata conduct a general meeting to elect a strata council. A new strata council will be elected at the strata's next annual general meeting and I see no reason to interfere with strata's governance by its current elected strata council.
54. Given my conclusion, I need not address the applicant's requested orders.

Balance of Dispute ST-2017-006059

55. The applicant says the strata incorrectly fined him \$800.00 for not providing a Form K, for rental of his strata lots. The applicant says that he did provide the completed Form Ks, but the strata lost them. In his submissions the applicant asks the tribunal to order reimbursement of "all \$9,622.30 in fines for the Form K's" but does not explain how he arrived at that amount. I find the applicant's claim is limited to \$800.00, given that is the amount claimed in the Dispute Notice.
56. There was no evidence provided that indicates bylaw fines were assessed against SL76.
57. The strata says that it reversed all Form K bylaw fines against SL120. I agree as this is consistent with the evidence provided. As discussed below, I find the bylaw fines in question relate solely to the applicant allegedly not providing a Form K for

SL171 as requested by the strata. The strata says that the bylaw fines it assessed against SL171 were assessed in accordance with section 135 of the SPA and are valid.

58. The applicant also says the strata's property manager overcharged him \$14.50 on his SL76 account as was shown on the SL76 ledger he was provided when the strata notified him of the plumbing invoice chargeback in August 2017. He seeks reimbursement of the \$14.50 overcharged, \$500.00 interest, and \$1,500 in punitive damages or alternatively that the credit be left on the account and given to the subsequent purchaser of SL76.
59. The strata says the applicant was not overcharged for the plumbing invoice and that it should not be responsible for interest or damages associated with the alleged overcharge on the plumbing invoice.
60. The applicant seeks other orders relating to safe attendance at council meetings, establishing procedures for electronic council meetings to permit owners' attendance, the supply of council meeting agendas and monthly financial statements to owners who might request them and establishing time periods for the strata to respond to correspondence. I find that these requested orders do not bear any relationship to the claims made for reimbursement of bylaw fines or other charges.
61. Finally, the applicant seeks orders that penalties of \$1.00 be assessed against the property manager or strata respectively for failing to properly maintain the strata's records and wrongly imposing a bylaw fine. Not only do these requested orders bear no relationship to the applicant's claim, I find them to be completely baseless and without merit. Given the only requests made by the applicant in the Dispute Notice were the monetary orders noted above, I decline to make the non-monetary orders the applicant added in his submissions.

Is the strata entitled to collect \$800 in bylaw fines from the applicant for not filing Form Ks relating to the rental of the applicant's strata lots?

62. I turn now to the applicant's remaining monetary claims.
63. Section 146(1) of the SPA, and bylaws 13.1 and 13.2 require an owner to provide a completed Form K to the strata within 2 weeks of renting out all or part of a strata lot.
64. The applicant says, with respect to SL171, he mailed the completed Form K to the strata's property manager in compliance with the SPA and bylaw requirements on October 17, 2014. He provided a copy of a completed Form K dated October 11, 2014 in evidence. The Form K was stamped "COPY" in the top right corner of the document and contained a handwritten note below the stamp that states "Mailed to [the strata's property manager] Oct 17/14".
65. In July 2016, the strata wrote to the applicant advising it did not have Form Ks on file for SL120 or SL171 and requested the applicant provide copies within 14 days. It is undisputed the applicant did not reply or provide copies of the requested Form Ks.
66. On August 21, 2017, the strata wrote to the applicant requesting a copy of the Form K for SL171 again stating it did not have a Form K on file, contrary to bylaws 13.1 and 13.2, and requested the applicant provide a completed Form K prior to September 5, 2017 to avoid being fined. The letter advised the applicant he could appeal the decision in writing within 14 days under section 135 of the SPA.
67. The applicant did not respond until September 27, 2017 when he emailed the strata. In the email, the applicant acknowledges he had left a message for the property manager earlier that day and requested a return telephone call "re your latest \$200 fine for failing to submit the Form K(s)." He questioned what happened to the Form K he had previously submitted within 2 weeks of entering into a rental agreement with his tenant and asked if it was lost. The applicant also alleged the strata was harassing him and that he would happily provide a copy if the strata admitted to

losing or destroying the previously submitted Form K. He also requested the fines be removed.

68. On December 27, 2017, the applicant provided copies of the Form K for SL171 noted above to the tribunal and strata as part of this dispute.
69. The strata says the bylaw fines assessed against SL171 totaled \$2,600.00. The SL171 ledger shows \$200 fines were assessed about every 7 days from September 20, 2017 through April 4, 2018 and that \$3,200.00 in fines were reversed on April 12, 2018. This agrees with the strata's position that the total amount of fines assessed against SL171 for failing to provide a Form K was \$2,600.00. Based on the ledger provided for SL171, I find the bylaw fines relate to the period September 5, 2017 through to December 27, 2017.
70. The applicant does not claim the strata failed to follow the requirements of section 135 of the SPA, but rather that the strata lost the Form K he says he had provided at the time he rented out SL171. This is supported by his September 27, 2017 email described above.
71. The applicant was asked at least twice to provide a completed Form K for SL171; in July 2016 and August 2017. Despite being warned that fines would be assessed if he did not provide a completed Form K by September 5, 2017, the applicant refused. Had the applicant simply provided the copy of the Form K he had for SL171 prior to September 5, 2017, he would have avoided all bylaw fines that are the subject of this dispute. That he might have previously mailed a completed Form K was not relevant to the strata's request to supply a new one. Further, the handwritten mailing date on the copy of the Form K he ultimately provided is not proof he actually mailed it or that the strata received it.
72. For all of these reasons, I find the strata was entitled to fine the applicant for not providing a completed Form K for SL171.
73. Given my conclusion, I need not address the applicant's requested orders.

Should I order the strata to reimburse the applicant an alleged overcharge of \$14.50, \$500 for interest and \$1,500 for damages?

74. As for the charge of \$14.50, the strata says that there is no record of this amount being charged to the applicant's accounts for either SL120 or SL171. It asks the tribunal to dismiss the applicant's claim.
75. It is clear the applicant's claim for \$14.50 relates to SL76 as shown on the ledger provided to the owner in October 2017, with the plumbing invoice chargeback. The ledger shows a \$14.50 credit balance on the SL76 account from June 1, 2016 through October 1, 2017. After the \$157.50 plumbing invoice was charged on October 17, 2017, the account shows a balance due of \$143.00.
76. The ledger does not show any balances before June 1, 2016 or after October 17, 2017. The applicant sold SL76 on October 30, 2017 and has not provided any evidence as to the amount his notary paid to obtain the Form F. Without proof of the amount paid, or a copy of a statement of adjustments prepared by the applicant's notary for the SL76 sale, I am unable to determine if the \$14.50 credit has already been accounted for. Therefore, I find the owner not met the burden of proof and I dismiss this aspect of the applicant's claim.
77. Given my conclusion, I need not address the applicant's requested orders or his alternative order.

TRIBUNAL FEES AND EXPENSES

78. The applicant claims \$225 for tribunal fees for each of the 4 disputes for a total of \$900.00. He does not claim any dispute-related expenses.
79. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case to deviate from the general rule. The applicant was not successful in any of his claims and did not submit any dispute-related expenses in addition to those discussed above. As a

result, I make no order for reimbursement of the applicant's tribunal fees or expenses.

80. The strata corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the applicant.

ORDER

81. I order that the applicants' claims and therefore these disputes are dismissed.

J. Garth Cambrey, Vice Chair